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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,172	03/11/2004	Bernd Aumann	ZAHFRI P604US	7581
20210	7590	01/09/2006	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			LE, DAVID D	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/798,172	AUMANN, BERND	
	Examiner	Art Unit	
	David D. Le	3681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This is the second Office action on the merits of Application No. 10/798,172, filed on 11 March 2004. Claims 17-24 are pending.

### **Documents**

2. The following documents have been received and filed as part of the patent application:
  - Information Disclosure Statement, received on 03/11/04
  - Foreign Priority Document, received on 03/11/04

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

#### **Claim 19:**

- Line 3 recites the limitation “a disengaging direction”. It is unclear whether this newly recited limitation “a disengaging direction” is different from the one, which is first recited on lines 15-16 of claim 18.

Claim 20:

- Lines 2-3 recites the limitation “a maximum power”. It is unclear whether this newly recited limitation “a maximum power” is different from the one, which is first recited on line 14 of claim 18.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 5,509,520 to Evan et al. in view of U. S. Patent No. 5,699,248 to Nakagami et al.**

Claims 17-21:

***Evans*** (Figs. 1-10; column 2, line 37 – column 7, line 30) discloses an electrohydraulic control device for a drive train comprising:

- A drive engine (i.e., Fig. 1, element 104) for driving both a shiftable transmission (i.e., Fig. 1, element 114) and an auxiliary drive (i.e., column 7, line 16);
- A hydrodynamic torque converter (i.e., Fig. 1, element 106) coupling the drive engine to the shiftable transmission;
- A converter bridging clutch (i.e., Fig. 1, element 116) for releasably coupling a pump impeller (i.e., Fig. 1, element 108) of the hydrodynamic torque converter to the drive engine;

- A hydraulic pump for a working hydraulic system (i.e., Fig. 1);
- An electronic control unit (i.e., Fig. 1, element 124) for controlling the operation of the working hydraulic system and the operation of the propulsion drive (i.e., Fig. 1, element 100);
- Wherein the electronic control unit controls the drive engine and the clutch to establish a driving speed of the propulsion drive and a speed of the auxiliary drive dependent upon position of a driving pedal (i.e., Fig. 1, element 136 and column 7, lines 13-24);
- Wherein, when the drive engine is operating at maximum power, the clutch is engaged and the auxiliary drive is then actuated, the clutch is actuated in a disengaging direction and the drive engine is regulated so that the auxiliary drive reaches a defined speed and a driving speed of the propulsion drive is reduced as the driving resistance increases (i.e., column 7, lines 13-24);
- Wherein, when the auxiliary drive is actuated and the clutch is engaged, the clutch is actuated in the disengaging direction a sufficiently amount in order for the auxiliary drive to reach a defined speed (i.e., column 7, lines 13-24);
- Wherein, when the drive engine is operating below the maximum power and the clutch is engaged and the auxiliary drive is then actuated, the clutch is actuated in the disengaging direction and the drive engine is regulated such that the auxiliary drive reaches a defined speed and the driving speed corresponds to a speed specified by a position of the driving pedal (i.e., column 7, lines 17-21);

- Wherein, when the auxiliary drive is actuated and the driving pedal is actuated in a direction of lower speed, a speed of the drive engine increases (i.e., column 7, lines 13-24);
- A service brake (i.e., column 7, line 19) for reducing a driving speed of the propulsion drive;
- Wherein, when the auxiliary drive is actuated and the driving pedal is actuated in a direction of higher speed, a speed of the auxiliary drive is increasing and the shiftable transmission is shifting in a direction of a higher transmission ratio (i.e., column 4, line 66 – column 5, line 41).

*Evan* does not explicitly disclose a selector lever for controlling the operation of the auxiliary drive.

*Nakagami* (i.e., Figs. 1-3; column 3, line 54 – column 9, line 14), on the other hand, teaches a running slip control system for a bulldozer comprising:

- A selector lever (i.e., Fig. 1, element 18) for controlling the operation of the blade (7); and
- An electronic controller (41) for electronically control the operation of the blade (7) based on the position of the selector lever (i.e., column 9, lines 8-14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Evan such that the auxiliary drive, as defined above, is controlled by a selector lever, in view of Nakagami, and the electronic controller controls the auxiliary drive and the propulsion drive dependent upon positions of the driving pedal and the selector lever, in order to improve the overall operating efficiency of the propulsion drive (i.e., Nakagami, column 1, lines 23-30).

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 17-24 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Le whose telephone number is 571-272-7092. The examiner can normally be reached on Mon-Fri (0700-1530).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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CHARLES A. MARMOR  
SUPERVISOR  
ART UNIT 3